

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

ALBERT S.N. HEE,)	Cr. No. 14-00826 SOM
)	
Petitioner,)	ORDER DENYING REQUEST FOR
)	CERTIFICATE OF APPEALABILITY
vs.)	
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	
_____)	

ORDER DENYING REQUEST FOR CERTIFICATE OF APPEALABILITY

Petitioner Albert Hee was convicted of having corruptly interfered with the administration of Internal Revenue Service ("IRS") laws in violation of 26 U.S.C. § 7212(a) and of six counts of having filed false tax returns in violation of 26 U.S.C. § 7206(1). He is currently serving a sentence of 46 months imprisonment. On March 16, 2018, Hee filed a "Motion Under 28 U.S.C. § 2255 To Vacate, Set Aside, Or Correct Sentence By A Person In Federal Custody." On September 25, 2018, this court denied that motion, and Judgment was entered against Hee.

On October 15, 2018, Hee filed a notice of appeal, which this court also deems to be a request that this court grant a certificate of appealability. *See United States v. Asrar*, 116 F.3d 1268, 1270 (9th Cir. 1997) ("If no express request is made for a certificate of appealability, the notice of appeal shall be deemed to constitute a request for a certificate."). On February 6, 2019, the Ninth Circuit remanded

this case for the limited purpose of addressing Hee's request for a certificate of appealability. That request is denied.

An appeal may not be taken to the court of appeals from a final order in a § 2255 proceeding "[u]nless a circuit justice or judge issues a certificate of appealability." 28 U.S.C. § 2253(c)(1)(B). The court shall issue a certificate of appealability "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When a district court denies a § 2255 petition on the merits, a petitioner, to satisfy the requirements of section 2253(c)(2), "must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). When, however, a

district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a [certificate of appealability] should issue when the prisoner shows . . . that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.

Id.

As set forth in the court's order, this court determines that no reasonable jurist would find this court's assessment of the merits of Hee's constitutional claims

debatable or wrong. Nor would any reasonable jurist determine that the procedural grounds for denying Hee's § 2255 petition would be debatable. The vast majority of Hee's § 2255 petition related to the IRS's alleged fabrication of evidence and the Government's alleged suppression of exculpatory evidence. These claims were an attempt to relitigate claims already rejected by the Ninth Circuit and therefore were clearly procedurally barred. His claims of ineffective assistant of counsel were new, but the record established that these claims lacked merit. Hee failed to demonstrate that his trial attorneys were deficient in their representation of him or that he suffered any prejudice.

The court declines to issue a certificate of appealability for any claim that Hee may raise on appeal.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, February 6, 2019.



/s/ Susan Oki Mollway

Susan Oki Mollway
United States District Judge

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SOM; ORDER DENYING REQUEST FOR CERTIFICATE OF APPEALABILITY.